

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case
27-CA-247076Date Filed
8/22/2019**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer LivWell Enlightened Health	b. Tel. No. (720) 240-9885
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 5141 Franklin Street CO Denver 80216-_____	e. Employer Representative John Lord CEO and Owner, LivWell Enlightened Health
	g. e-Mail
	h. Number of workers employed 20
i. Type of Establishment (factory, mine, wholesaler, etc.) Retail (Drugs)	j. Identify principal product or service Cannabis
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
--See additional page--	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Todd McNamara Title: General Counsel United Food and Commercial Workers International Union AFL/CIO Local 7	
4a. Address (Street and number, city, state, and ZIP code) 7760 West 38th Avenue Suite 400 CO Wheat Ridge 80033-_____	4b. Tel. No. (303) 425-0897
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail tmcnamara@ufcw7.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Food and Commercial Workers International Union AFL/CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By Tyler Reese (signature of representative or person making charge)	Tyler Reese Title: Associate General Counsel (Print/type name and title or office, if any)
7760 West 38th Avenue Suite 400 Address: Wheat Ridge CO 80033-_____	08/22/2019 12:01:53 (date)
	Tel. No. (303) 425-0897
	Office, if any, Cell No.
	Fax No.
	e-Mail treese@ufcw7.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(1)

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by engaging in surveillance or creating impression of surveillance of employees' union activities.

Name of Employer's Agent/Representative who made the statement	Approximate date
Multiple Managers and Security Personnel	8/19/2019



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Agency Website: www.nlr.gov
Telephone: (303)844-3551
Fax: (303)844-6249



Download
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August 23, 2019

John Lord, CEO and Owner
LivWell Enlightened Health
5141 Franklin Street
Denver, CO 80216

Re: LivWell Enlightened Health
Case 27-CA-247076

Dear Mr. Lord:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney ISABEL C. SAVELAND whose telephone number is (720)598-7416. If this Board agent is not available, you may contact Deputy Regional Attorney LETICIA PENA whose telephone number is (720)598-7412.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

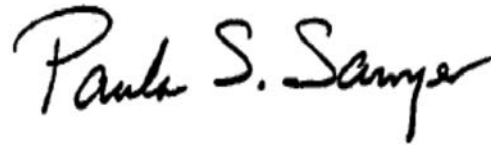
Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Paula S. Sawyer". The signature is written in a cursive, flowing style.

PAULA SAWYER
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

27-CA-247076

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months**? If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIVWELL ENLIGHTENED HEALTH

Charged Party

and

**UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION AFL/CIO
LOCAL 7**

Charging Party

Case 27-CA-247076

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 23, 2019, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

John Lord, CEO and Owner,
LivWell Enlightened Health
5141 Franklin Street
Denver, CO 80216

August 23, 2019

Date

Vicky Luu, Designated Agent of NLRB

Name

/s/ V Luu

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 27
Byron Rogers Federal Office Building
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Denver, CO 80294

Agency Website: www.nlr.gov
Telephone: (303)844-3551
Fax: (303)844-6249



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August 23, 2019

Todd McNamara, General Counsel
United Food and Commercial Workers International Union AFL/CIO Local 7
7760 West 38th Avenue, Suite 400
Wheat Ridge, CO 80033

Re: LivWell Enlightened Health
Case 27-CA-247076

Dear Mr. McNamara:

The charge that you filed in this case on August 22, 2019 has been docketed as case number 27-CA-247076. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney ISABEL C. SAVELAND whose telephone number is (720)598-7416. If this Board agent is not available, you may contact Deputy Regional Attorney LETICIA PENA whose telephone number is (720)598-7412.

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Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

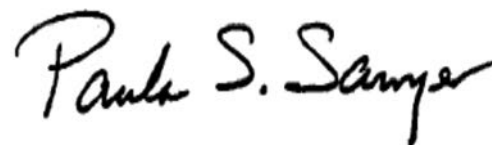
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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Paula S. Sawyer". The signature is written in a cursive, flowing style.

PAULA SAWYER
Regional Director

cc: Tyler Reese, Associate General Counsel
United Food and Commercial Workers
International Union AFL/CIO Local 7
7760 West 38th Avenue, Suite 400
Wheat Ridge, CO 80033

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

United Food & Commercial Workers Union, Local 7

and

LivWell Enlightened Health

CASE 27-CA-247076

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____

United Food & Commercial Workers Union, Local 7

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Tyler Resse

MAILING ADDRESS: 7760 W. 38th Ave., Wheat Ridge, CO 80033

E-MAIL ADDRESS: treese@ufcw7.com

OFFICE TELEPHONE NUMBER: 303.425.0897 ext. 429

CELL PHONE NUMBER: 720.646.8061

FAX: _____

SIGNATURE: 

DATE: 9/9/19

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

United Food and Commercial Workers International Union
AFL/CIO Local 7

and

LivWell Enlightened Health

CASE 27-CA-247076

☐ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

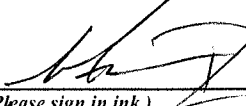
THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
the actual employer of record, Delt Services, LLC. There is no formal entity named LivWell Enlightened
Health, and LivWell Enlightened Health is not a proper Respondent in this matter.
IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

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DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE
CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Micah Dawson
MAILING ADDRESS: 1801 California Street, Suite 2700, Denver, Colorado 80202
E-MAIL ADDRESS: mdawson@fisherphillips.com
OFFICE TELEPHONE NUMBER: 303-218-3665
CELL PHONE NUMBER: 970-201-6854 FAX: _____
SIGNATURE: 
DATE: 9/13/19 (Please sign in ink.)

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE
EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE
WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

United Food and Commercial Workers International Union
AFL/CIO Local 7

and

LivWell Enlightened Health

CASE 27-CA-247076

☐ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

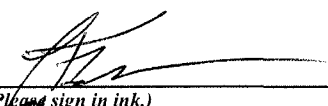
THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
the actual employer of record, Delt Services, LLC. There is no formal entity named LivWell Enlightened
Health, and LivWell Enlightened Health is not a proper Respondent in this matter.
IN THE ABOVE-CAPTIONED MATTER.

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DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE
CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Todd Fredrickson	
MAILING ADDRESS: 1801 California Street, Suite 2700, Denver, Colorado 80202	
E-MAIL ADDRESS: tfredrickson@fisherphillips.com	
OFFICE TELEPHONE NUMBER: 303-218-3660	
CELL PHONE NUMBER: 303-475-6188	FAX:
SIGNATURE: 	
DATE: 9/13/18 (Please sign in ink.)	

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE
EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE
WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.



fisherphillips.com

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Denver, CO 80202

(303) 218-3650 Tel
(303) 218-3651 Fax

Writer's Direct Dial:
303-218-3660

Writer's E-mail:
tfredrickson@fisherphillips.com

October 4, 2019

Via E-File

Isabel A. Saveland, Field Attorney
NLRB Region 27
1961 Stout Street, Suite 13-103
Denver, CO 80294

Re: *Livwell Enlightened Health ("LivWell")*
Case No. 27-CA-247076

Dear Ms. Saveland:

As you know, this firm represents LivWell. This letter responds to your September 16, 2019 letter and constitutes LivWell's Position Statement regarding the above-referenced Charge. As detailed below, LivWell has not violated § 8(a)(1), nor any other section of the National Labor Relations Act ("Act").

This statement is only a summary of LivWell's position with respect to the Charge and is not intended as a comprehensive statement of all of the material facts in this case. LivWell reserves the right to amend, modify or supplement this statement at any point in this investigation or any subsequent, related proceeding and to introduce all relevant evidence. The information discussed below, however, demonstrates that the Charge is baseless and should be dismissed.

LivWell considers this statement and all documents attached as exhibits and filed with this statement to be confidential, and requests that their use and distribution be restricted to employees of the NLRB who have a need to know the information contained herein. LivWell further requests that it be given written notice prior to the release of this statement, or any other information submitted herewith, to anyone outside the Board.

I. Factual Background

Before turning to the specific allegations in your letter, the following is background information about LivWell and its operations, including policies and state regulations pertinent to the Charge. LivWell is a closely held family business that grows, harvests, processes, and conducts retail sales of the highest-quality recreational and medical marijuana. With careful tending and hard work, LivWell has grown from a single location to the nation's leading cannabis company. Today, LivWell has multiple locations, hundreds of employees and is

Fisher & Phillips LLP

Atlanta • Baltimore • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Fort Lauderdale • Gulfport • Houston
Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • New Jersey • New Orleans • Orlando • Philadelphia
Phoenix • Portland • Sacramento • San Antonio • San Diego • San Francisco • Seattle • Tampa • Washington, DC

dedicated to treating employees all as well as the marijuana business has treated the Company. LivWell has a mission to not only supply great wages and benefits, but to offer in-depth training and opportunities for professional growth.

Due to the nature of its business, LivWell is required by law to enforce significant restrictions and security protocols at every dispensary and grow operation. LivWell's retail dispensaries are "Licensed Premises," within which the license holder, LivWell, is authorized to cultivate, manufacture, distribute, sell, store, transport, or test retail marijuana in strict accordance with the provisions of the Colorado Marijuana Enforcement Division's Retail Code. See CCR 212-1 Medical Marijuana Rules; CCR 212-2 Retail Marijuana Rules.

LivWell's grow operations are "Limited Access Areas," which are held to a higher standard than Licensed Premises. Limited Access Areas are required by law to have 24-hour video surveillance in the building, on the parking lot, at any entry and egress point, and on the surrounding area outside of any entry and egress point. Additionally, any person that enters a Limited Access Area that does not have a valid Occupational License shall be considered a visitor and must be escorted at all times by a person who holds a valid Associated Key License or other Occupational License. See Marijuana Enforcement Division Rule M 301–Limited Access Areas. Failure by a license holder to continuously escort and monitor a person who does not have a valid Occupational License within a Limited Access Area is considered a license violation affecting the public safety, the most severe category of a violation. See Marijuana Enforcement Division, Rule M 1307–Penalties. The range of penalties for a violation affecting the public safety includes license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$100,000, and/or license revocation depending on the mitigating and aggravating circumstances.

II. Background Leading Up to the August Interactions With the Union

In June 2019, UFCW Local 7 ("Union") and its members engaged in an unlawful scheme of disseminating false and disparaging advertisements about LivWell. On multiple occasions Union representatives handed out flyers that included blatantly false information about LivWell to customers entering and walking outside numerous LivWell retail dispensaries. Customers reported that while providing the advertisements, the Union representatives informed them that they should shop at LivWell's competitors instead.

Union representatives also repeatedly trespassed onto LivWell property at multiple locations while engaging in these activities. In one specific instance, on June 12, 2019, one of the Union's representatives openly trespassed at the LivWell Larimer retail dispensary at 2863 Larimer St, Denver, CO 80205. The Union representative walked onto the property between 4:30 and 4:50 PM and asked to speak with the (b) (6), (b) (7)(C). The (b) (6), (b) (7)(C) requested the (b) (6), (b) (7)(C) identification as Colorado law requires at any Licensed Premises, which caused the (b) (6), (b) (7)(C) to slide a copy of the flyer under the window before leaving.

On June 12, 2019, counsel for LivWell notified the Union about the false statements and misleading communication contained in the flyer and the trespassing issues. Counsel for LivWell requested that the Union cease and desist from trespassing and making such false statements. The Union denied any trespassing occurred, despite the clear video evidence showing the unlawful activity.

III. Response to the Union's Allegations

According to your September 16, 2019 letter, the Union alleges that LivWell has engaged in unlawful surveillance by virtue of LivWell's security personnel allegedly videotaping Union representatives engaging in Section 7 protected activities. The specific allegations involve (b) (6), (b) (7)(C) allegedly videotaping a group of Union representatives at LivWell's retail dispensary at 3980 Franklin Street and LivWell's grow operation at 5141 Franklin Street. While the very suggestion that a property owner and license holder's actions in videotaping a group of people, not its employees, congregated on or near its property, is of doubtful viability as a proper 8(a)(1) allegation, LivWell's actions on August 19, 2019, even when viewed in the light most favorable to the Union, would not have tended to coerce any "employees" in the exercise of their Section 7 rights.

LivWell's security personnel are trained extensively on policies and procedures for recording and documenting third party activities before commencing work at retail dispensaries and the grow operations. After the June trespassing incidents by Union representatives, the security team was instructed to limit recordings to instances in which they observed potentially unlawful conduct, such as trespassing, Union members blocking ingress and egress to a dispensary or facility, or Union members engaging in violence or vandalism. The security team also have been trained not to record lawful employee activity except as required by state law.

LivWell is not aware of any incidents at the retail dispensary located at 3980 Franklin Street. The Union's vague and allegation that a (b) (6), (b) (7)(C) "appeared" to be filming Union representatives engaging "employees" is unsupported. To LivWell's knowledge, no such recordings exist, nor was there any unlawful surveillance at the dispensary.

LivWell is aware of one incident recorded by the security team, which involved Union member's engaging in unlawful activities at LivWell's grow operation at 5141 Franklin Street. After receiving complaints from employees about a group of people blocking the entrance to the secured parking lot, the security team assessed the situation. The security team found a group of individuals sauntering back and forth in the middle of LivWell's gated entrance to the grow operation.¹ After determining that the individuals were trespassing and creating a safety issue by blocking ingress and egress to the gated parking lot, the security team took video footage identifying the individual Union representatives who were trespassing and the instances where Union representatives were stopping, or attempting to stop, vehicles from entering or leaving the facility. During these incidents, the Union representatives entered onto LivWell property in an attempt to stop the vehicles. As noted above, an unlicensed individual trespassing onto the grow operation property, or a Limited Access Area, is potentially a serious security issue for LivWell as a license holder.

IV. Argument and Citation of Authority

To determine whether an employer has engaged in unlawful surveillance, the Board considers the totality of circumstances to decide whether the employer's conduct tends to interfere with Section 7 rights. *Hoschton Garment Co.*, 279 NLRB 565, 567 (1986). The same holds true in regards to photographing or videotaping protected activity. *Trailmobile Trailer, LLC*, 343 NLRB 95, 96 (2004) ("[T]he inquiry is whether the photographing or videotaping has a reasonable

¹ Contrary to the information the Union has provided to you, (b) (6), (b) (7)(C) did not provide (b) (6), (b) (7)(C) name or explain the group's purpose.

tendency to interfere with protected activity under the circumstances"). The use of cameras and videotapes is not per se illegal and must be reviewed in the circumstances of each case. *United States Steel Corp. v. NLRB*, 682 F.2d 98 (3d Cir. 1982) (no violation where employer photographed protest march).

The Board consistently has permitted employers to photograph and video unlawful union conduct or unprotected activity to collect evidence of the wrongdoing. *Town & Country Supermkts.*, 340 NLRB 1410 (2004) (employer did not violate Act by photographing pickets as they blocked entrances and impeded vehicles); *Berton Kirshner, Inc.*, 209 NLRB 1081 (1974) (no unlawful surveillance where employer documented trespass by union representatives during handbilling), *enforced*, 523 F.2d 1046 (9th Cir. 1975). Similarly, the Board has recognized that where an employer has legitimate safety concerns, it may lawfully record union activities. *Washington Fruit & Produce Co.*, 343 NLRB 1215, 1217-18 (2004) (employer's recording of union rally was lawful where the employer knew that a large, high-profile rally was going to occur, and the employer had "every reason to expect" legitimate safety concerns). In such cases, the Board will consider whether the photographing or videotaping was justified because the employer reasonably anticipated misconduct or disruption. *Id.*; *see also Saia Motor Freight Line, Inc.*, 333 NLRB 784 (2001) (proper justification for photographing because of legitimate safety and liability concerns that an accident may occur).

Here, the security team at the grow facility responded to employee complaints and were confronted with trespassers in the middle of the entrance to their gated parking lot, which is adjacent to a Limited Access Area under Colorado law. *Rahn Sonoma Ltd.*, 322 NLRB 898, 154 LRRM 1215 (1997) (hotel employer lawfully videotaped pickets based on complaints about the noise generated by the pickets and the need for documentation for a possible restraining order). The security team found the Union representatives actions were threatening public safety by impeding the flow of traffic into or out of the grow operation and heightening the risk of an accident. *Saia Motor Freight Line, Inc.* at 784 (employer was justified in photographing the union's handbilling of truck drivers in the center of employer's driveway because the union, at least occasionally, slowed down incoming traffic). At the same time, the security team determined the Union representatives were unlawfully trespassing, a potential threat to LivWell's license, and took video to preserve evidence of further violations of state law, municipal ordinances and/or traffic laws. *Town & Country Supermkts.* at 1410; *Berton Kirshner, Inc.* at 1081.

The totality of these circumstances show that LivWell was justified in its concerns about the safety of its employees as well as the Union's continued trespassing. Having previously dealt with the Union's refusal to take any accountability for blatant trespassing, LivWell reasonably anticipated further instances. This concern was heightened by the Union's unlawful activities taking place at LivWell's grow operation, not the retail dispensaries. In the end, LivWell was peacefully enforcing its obligations as a license holder and its property rights and was working to ensure the Union respected those property rights.

Finally, the Union's allegation that the security team's actions created an impression of surveillance also falls short of the mark. Unlike a normal work setting, employees at a Limited Access Area expect to be on camera all day, every day, at work. LivWell's standard operating procedure also includes the use of Go-Pro cameras when any third-party entity, including governmental investigators, are on property. There is no evidence that any employees felt intimidated, or impacted whatsoever, by the security team's videotaping. Accordingly, LivWell did not engage in any unlawful surveillance or otherwise interfere with the rights of employees.

V. Conclusion

Based on the foregoing information, LivWell has not violated § 8(a)(1) of the Act. As a result, LivWell requests that the subject Charge be dismissed or timely withdrawn. Please contact me if you have any questions or need additional information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fredrickson", written in a cursive style.

Todd Fredrickson
For FISHER & PHILLIPS LLP

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
1st Amended **CHARGE AGAINST EMPLOYER****DO NOT WRITE IN THIS SPACE**Case
27-CA-247076

Date Filed

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Delt Services, LLC d/b/a Liv Well Enlightened Health		b. Tel. No. (720) 240-9885
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 5141 Franklin Street Denver, CO 80216	e. Employer Representative John Lord, Owner	g. e-mail
		h. Number of workers employed 20
i. Type of Establishment (factory, mine, wholesaler, etc.) Cannabis grow/dispensary	j. Identify principal product or service Cannabis	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

About August 19, 2019 the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by engaging in surveillance or creating impression of surveillance of employees' union activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

United Food and Commercial Workers International Union, Local 7 AFL-CIO

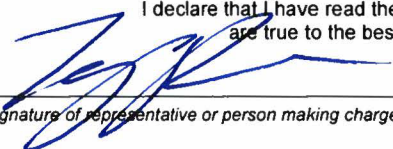
4a. Address (Street and number, city, state, and ZIP code) 7760 W. 38th Ave. Suite 400 Wheat Ridge, CO 80033	4b. Tel. No. 303-425-0897
	4c. Cell No.
	4d. Fax No.
	4e. e-mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

United Food and Commercial Workers International Union AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements
are true to the best of my knowledge and belief.


(signature of representative or person making charge)

Tyler Reese, Associate General Counsel

(Print/type name and title or office, if any)

Tel. No. 303-425-0897
Office, if any, Cell No.
Fax No.
e-mail treese@ufcw7.com

Address 7760 W. 38th Ave. Suite 400 Wheat Ridge, CO 80033

Date

11/4/19

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Agency Website: www.nlr.gov
Telephone: (303)844-3551
Fax: (303)844-6249



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November 5, 2019

John Lord, CEO and Owner
LivWell Enlightened Health
5141 Franklin Street
Denver, CO 80216

Re: Delt Service, LLC d/b/a Liv Well
Enlightened Health
Case 27-CA-247076

Dear Mr. Lord:

Enclosed is a copy of the charge that has been filed in this case.

Investigator: This charge is being investigated by Field Attorney ISABEL C. SAVELAND whose telephone number is (720)598-7416. If the agent is not available, you may contact Regional Attorney LETICIA PENA whose telephone number is (720)598-7412.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

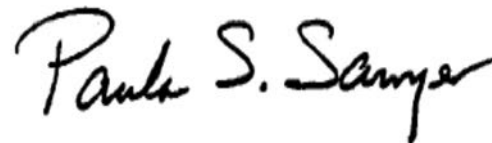
Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the

Agency's web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in black ink that reads "Paula S. Sawyer". The signature is written in a cursive, flowing style.

PAULA S. SAWYER
Regional Director

Enclosure: Copy of charge

cc: Micah D. Dawson, ESQ.
Todd Fredrickson, ESQ.
Fisher & Phillips, LLP
1801 California St., Ste. 2700
Denver, CO 80202

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIVWELL ENLIGHTENED HEALTH

Charged Party

and

**UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION AFL/CIO
LOCAL 7**

Charging Party

Case 27-CA-247076

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 5, 2019, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

John Lord, CEO and Owner
LivWell Enlightened Health
5141 Franklin Street
Denver, CO 80216

Micah D. Dawson, ESQ.
Todd Fredrickson, ESQ.
Fisher & Phillips, LLP
1801 California St., Ste. 2700
Denver, CO 80202

November 5, 2019

Date

Ariel York
Designated Agent of NLRB

Name

Ariel York

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 27
Byron Rogers Federal Office Building
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November 5, 2019

Todd McNamara, General Counsel
Tyler Reese, Associate General Counsel
United Food and Commercial Workers International Union AFL/CIO Local 7
7760 West 38th Avenue Suite 400
Wheat Ridge, CO 80033

Re: Delt Service, LLC d/b/a Liv Well
Enlightened Health
Case 27-CA-247076

Dear Mr. McNamara:

We have docketed the charge that you filed in this case.

Investigator: This charge is being investigated by Field Attorney ISABEL C. SAVELAND whose telephone number is (720)598-7416. If the agent is not available, you may contact Regional Attorney LETICIA PENA whose telephone number is (720)598-7412.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

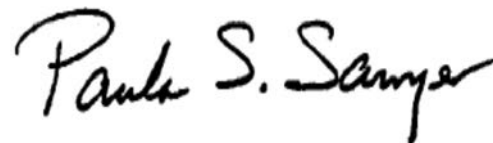
Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

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If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in black ink that reads "Paula S. Sawyer". The signature is written in a cursive, flowing style.

PAULA S. SAWYER
Regional Director



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

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Telephone: (303)844-3551
Fax: (303)844-6249

January 21, 2020

Micah D. Dawson, Esq.
Todd Fredrickson, Esq.
Fisher & Phillips, LLP
1801 California St., Ste. 2700
Denver, CO 80202
mdawson@fisherphillips.com
tfredrickson@fisherphillips.com

Re: Delt Service, LLC d/b/a Liv Well
Enlightened Health
Case 27-CA-247076

Dear Mr. Dawson and Mr. Fredrickson:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

PAULA S. SAWYER
Regional Director

cc: John Lord, CEO and Owner
LivWell Enlightened Health
5141 Franklin Street
Denver, CO 80216

Todd McNamara, General Counsel
Tyler Reese, Associate General Counsel
United Food and Commercial Workers
International Union AFL/CIO Local 7
7760 West 38th Avenue Suite 400
Wheat Ridge, CO 80033
tmcnamara@ufcw7.com
treese@ufcw7.com